

# **BACKGROUND PAPER FOR HEARING JANUARY 6, 2004**

## **CALIFORNIA ARCHITECTS BOARD**

### **IDENTIFIED ISSUES, QUESTIONS FOR THE BOARD, AND BACKGROUND CONCERNING ISSUES**

**GENERAL INFORMATION:** The California Architects Board (Board), originally known as the State Board of Architecture, was created by the California Legislature in 1901 to safeguard the public's health, safety, and welfare. Presently, all states and territories of the U.S. have architectural licensing boards. California has both a practice act, which precludes unlicensed individuals from practicing architecture, and a title act, which restricts the use of the title "architect" to those who have been licensed by the Board. Currently, there are more than 105,000 licensed architects in the United States. The Board licenses and regulates more than 21,000 architects. To become licensed as an architect in California, a candidate must successfully complete national and state examinations, as well as provide evidence of at least eight years of education or experience.

The Board is composed of 10 members: five architects and five public members. All five architect members and three public members are appointed by the governor. The remaining two public members are appointed by the Assembly Speaker and the Senate Rules Committee respectively. The Board is a special fund agency whose main source of revenue comes from fees paid by examination candidates and licensees.

**PRIOR SUNSET REVIEW:** The Board was last reviewed by the Joint Legislative Sunset Review Committee (JLSRC) seven years ago (1996-97). The JLSRC reviewed whether licensing and regulation of the practice of architecture should continue and found that there was sufficient evidence that the unregulated practice of architecture could cause significant public harm. The JLSRC recommended continuing the Board and directed the Board to implement a number of recommendations and changes. These recommendations included: (1) the Board's oral examination should be reviewed to assess if it is duplicative of the national examination and whether a written examination might be more appropriate; (2) the Board's cite and fine procedures should be changed to provide a more simplified process; and (3) the limited immunity granted architects should be expanded to all declared disasters.

In September 2003, the Board submitted its required sunset report to the JLSRC. In this report, information of which is provided in Members' binders, the Board described actions it has taken since the Board's prior review. The Board addressed several issues presented during its last review. Over the course of the last seven years, the Board has, among other things:

- Completed a comprehensive study on the proficiency of practicing architects;
- Adopted rules of professional conduct;

- Streamlined its citation program;
- Updated disciplinary guidelines; and
- Continued to use strategic planning to update mission and vision statements, goals and objectives, and a plan of action to realize them.

The following are unresolved issues pertaining to this Board, or areas of concern for the JLSRC, along with background information concerning the particular issue. There are also questions that staff has asked concerning the particular issue. The Board was provided with these issues and questions and is prepared to address each one if necessary.

## **CURRENT SUNSET REVIEW ISSUES**

### **BOARD COMMITTEE ISSUE**

**ISSUE #1:** The Board has five standing committees each of which develops policy in its respective area and makes recommendations to the full Board. The reasoning for the committees' compositions is unclear.

**Question #1 for the Board:** *How many members make up each committee? Are there individuals sitting on the Board's committees who are not members of the Board? Who determines the composition and membership of each committee? Does every committee have at least one public member? If not, why not?*

**Background:** The Board has the following standing committees: Communications Committee; Examination Committee; Professional Qualifications Committee; Executive Committee; and Enforcement and Regulatory Committee.

Of its five committees, the Executive Committee is the only committee of the Board composed solely of Board members. The other committees' compositions include individuals who do not sit on the Board. For example, the Examination Committee consists of only one architect Board member and seven architects with supplemental examination experience and the Regulatory and Enforcement Committee consists of two public Board members, one building official, three engineers, a representative from the design professional liability insurance industry, and two architects.

It is unusual for committees of a consumer board to be composed of individuals other than Board members themselves.

## **LICENSURE ISSUE**

**ISSUE #2:** Since 2000, the Board has been moving towards implementing a mandatory structured internship program. Proposed regulatory changes would require completion of the National Council of Architectural Registration Boards' (NCARB) Intern Development Program (IDP) beginning January 1, 2005.

**Question #2 for the Board:** *Please discuss the proposed regulatory changes and why the Board believes such changes are necessary. What is the Board's statutory authority to create the IDP Program? How does requiring IDP change the current licensure requirements? What impact does this have on candidates for licensure (e.g., time, cost)? How is completion of IDP beneficial? How is the Board planning to alert candidates for licensure of the change in requirements? Why has the Board requested that NCARB revise the setting and duration requirements?*

**Background:** Developed and administered by NCARB, IDP is a nationally recognized internship program that involves the compilation and maintenance of a record of internship activity reflecting structured exposure to 16 areas of practice. Interns are required to acquire 700 training units (5,600 hours) to satisfy the IDP training requirement.

The Board has always required a specified amount of work experience as part of its licensure requirements. Presently, the Board requires three years of specified work experience. The Board has long been concerned, however, that a broadly defined experience requirement does not ensure that interns receive exposure to a full range of the necessary areas of practice. For this reason, the Board voted to adopt a structured internship as a prerequisite for licensure, utilizing IDP as the vehicle. The Board believes that IDP will: 1) provide a uniform national standard that will help prepare interns for licensure; and 2) facilitate reciprocity because IDP is utilized in 46 other states. The Board granted preliminary approval of regulations to adopt IDP at its June 2003 meeting and is currently receiving public comment on the proposed regulations. It will discuss and act upon the final rulemaking package at its December 2003 meeting.

## **BUDGETARY ISSUES**

**ISSUE #3:** The Board made a \$1.8 million loan to the General Fund in February 2003. As a result, the Board projects reserve levels to fall to low levels in the coming fiscal years.

**Question #3 for the Board:** *How has the loan to the General Fund affected the Board's fund condition? Due to the reduction of funds in reserve and a continuing decline in the future, does the Board anticipate an increase in fees? Has a repayment schedule been requested by the Board? If so, what is it? Please explain the overall impact that budget cuts and the hiring freeze has had on the Board, in particular the licensing and enforcement programs.*

**Background:** The Board projects that its fund reserve will drop to .6 months within fiscal year 2004/05, and to a negative reserve of -1.5 months in fiscal year 2006/07 because in 2003/04 the Board made a \$1.8 million loan to the General Fund to help balance the state's budget.

The Board has indicated that it will work in conjunction with the DCA Budget Office and the Department of Finance to closely monitor the Board's fund condition.

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**ISSUE #4: The Board spends 46% of its budget on its examination program and only 34% on its enforcement program.**

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**Question #4 for the Board:** *Please explain why the Board spends such a large percentage of its budget on its examination program. Does the Board believe it should be spending a larger percentage of its budget on its enforcement program? The Board has indicated that it intends to redirect funds to its enforcement unit. Please explain.*

**Background:** The Board spends the highest percentage of its budget on its examination program. Since FY 1999/00, 46% of the Board's expenses have been utilized for the examination program. Total expenditures for the Board in FY 2002/03 were approximately \$2.5 million, and the Board spent almost \$1.2 million on its examination program.

The Board spends a smaller percentage of its overall budget on enforcement than most other Boards. Approximately 34% of its budget was spent on enforcement while other boards typically spend over 60%.

The Board has indicated that one of the program improvements planned is a redirection of funds to enforcement. It is unclear as to what that means or will entail.

### **EXAMINATION ISSUE**

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**ISSUE #5: The California Supplemental Examination (CSE) is administered in an oral format and the pass rates are approximately 50%.**

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**Question #5 for the Board:** *Please provide the justification for the oral exam. Since the last review of the Board, has there been a review of the oral exam to assess whether a written exam would be more appropriate and less costly as recommended? Please discuss the passage rates of the CSE and explain why only half of the candidates are successful in passing it.*

**Background:** The Board administers the CSE, a supplemental examination that all candidates who have successfully completed all divisions of the Architect Registration Examination (ARE) must take and pass prior to licensure. The CSE tests for those integrative aspects of practice that are not adequately tested in the ARE and those aspects of practice unique to California, including seismic design, energy conservation, environmental concerns, and legal issues.

The Board continues to use the CSE which is an oral examination. The vast majority of consumer boards have discontinued the administration of oral examinations.

For the past four years, on average, only 50% of the candidates who take this examination pass it.

The oral administration of this exam was an issue during the last review of this Board. It was recommended that DCA review the oral exam to assess whether a written exam would be more appropriate and cost effective. It is unclear whether this review has occurred.

## **ENFORCEMENT ISSUE**

**ISSUE #6:** The Board has expressed concern about the “welfare” component of its public health, safety, and welfare mandate. NCARB’s definition of “welfare” includes the statement: “An architect shall prefer the client’s interest over the architect’s interest and, when the issues are clear, the public’s interest over both.”

**Question #6 for the Board:** *Why has the Board been concerned about the welfare component of its mandate? Please expand upon NCARB’s definition of welfare. How does the Board interpret that definition? Is the Board in agreement with NCARB’s definition? How does the Board plan on using this definition?*

**Background:** Apparently, there has been concern on the part of the Board about the “welfare” component of its public health, safety and welfare mandate. The United States Supreme Court decision *Berman v. Parker*, 348 U.S. 26 (1954) states that: “The concept of the public welfare is broad and inclusive. The values it represents are spiritual as well as physical, aesthetic as well as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled.”

This holding is the basis for a definition of welfare developed by NCARB, which stipulates that: “An architect promotes the health, safety, and welfare of the public by planning and designing buildings, structures, and the spaces within and surrounding such buildings and structures, that 1) minimize the risk of injury to persons or property, and comply with all applicable building and safety codes; 2) are durable, environmentally friendly, cost effective and conserve resources; 3) are aesthetically appealing; 4) function properly in all relevant respects; and 5) enhance the public’s overall sense of well-being, harmony and community, and integrate effectively with the surrounding environment. An architect shall prefer the client’s interests over the architect’s interests and, when the issues are clear, the public’s interest over both.” (emphasis added).

The Board has indicated that it will consider how these definitions of public welfare are reflected in and furthered by its programs.

## **COMPETENCY ISSUE**

**ISSUE #7:** The Board conducted a study on the proficiency and competency of architects.

**Question #7 for the Board:** *Please discuss the outcome of this study. What does the Board plan to do with this information? What timeframe has the Board put on implementing such changes? How will this affect other Board programs?*

**Background:** In 2001, the Board completed its comprehensive study on the proficiency of practicing architects to assess the degree to which competency problems existed within the practice of architecture in California. The results indicated that there was not a competency problem sufficient to warrant a mandatory continuing education requirement at this time. The survey did, however, suggest that there are areas that might be in need of improvement. Accordingly, the Board worked with stakeholder groups to devise strategies to enhance a number of the Board's other programs, including examination, experience requirements, enforcement, and communication. While the Board's efforts to address the proficiency issue did not lead to a continuing education requirement, the Board has indicated that the study contributed to a larger effort to enhance a number of the Board's other programs.

## **REPORTING REQUIREMENT ISSUE**

**ISSUE #8:** Business and Professions Code Section 5588 requires insurance companies to report any settlement or arbitration award in excess of \$5,000. It seems that this is not being done.

**Question #8 for the Board:** *What the Board done to ensure compliance with this code section? What reporting has been provided from insurance companies? Has the Board worked with the Department of Insurance on this issue? When does the Board expect to receive the Attorney General opinion that was requested? Is the Board receiving compliance from other statutory reporting requirements (B&P Code Sections 5589 & 5590)?*

**Background:** Business and Professions Code Section 5588 requires insurance companies who provide liability insurance to an architect to send a complete report to the Board on any settlement or arbitration award in excess of \$5,000 of a claim or action for damages caused by the license holder's fraud, deceit, negligence, incompetence, or recklessness in practice.

However, it seems that insurance companies offering professional liability insurance may be failing to comply with this law.

The Board has requested an Attorney General opinion to obtain clarification on the statute.

## **DISCLOSURE POLICY ISSUE**

**ISSUE #9:** In August 2003, the Board voted to expand its consumer complaint disclosure policy.

**Question #9 for the Board:** *Is the Board's revised policy consistent with the "Recommended Minimum Standards for Consumer Complaint Disclosure" issued by DCA? Does it deviate from the DCA's recommended standards? If so, how? When does the Board plan to have the proposed changes to its disclosure policy in place?*

**Background:** On July 16, 2002, the DCA distributed its "Recommended Minimum Standards for Consumer Complaint Disclosure." Other boards are in varying stages of reviewing their current disclosure policies in light of this document and the suggested standards to be followed.

## **CONSUMER OUTREACH ISSUE**

**ISSUE #10:** The consumer satisfaction survey shows room for improvement.

**Question #10 for the Board:** *What steps has the Board taken, or intends on taking, to address the main reasons for dissatisfaction expressed by consumers? Is a complaint satisfaction survey mailed with every complaint closure letter?*

**Background:** When consumers indicated that they were not satisfied, it was generally because they were unhappy with the time taken to complete the investigation, the Board's assistance to them, the information provided regarding the complaint's status or status of the investigation, and the overall assistance provided by the Board.

The survey data did show that overall, and regardless of the outcome of the complaint, complainants were satisfied with knowing where to file a complaint, the way the complaint was initially handled, and with how the enforcement staff treated them.